



Atty. Docket No. 10070-1003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: McIntyre et al. )  
Serial No.: 09/379,439 )  
Filed: August 23, 1999 )  
For: METHOD AND APPARATUS )  
FOR PRODUCING )  
RADIOACTIVE MATERIALS )  
FOR MEDICAL TREATMENT )  
USING X-RAYS PRODUCED BY )  
AN ELECTRON ACCELERATOR )

Group Art Unit: 2876  
Examiner: Unknown

RECEIVED

JAN 23 2001

OFFICE OF PETITIONS

San Diego, California 92101  
January 24, 2000

Assistant Commissioner for Patents  
Washington, D.C. 20231

PETITION UNDER 37 C.F.R. §1.47(A) FOR FILING APPLICATION  
WITH NON-SIGNING JOINT INVENTOR

Dear Sir/Madam:

Varian Medical Systems, Inc. submits this Petition pursuant to 37 C.F.R. §1.47(a) on the basis that one of the named inventors of the above-referenced patent application is unavailable. It is therefore respectfully requested that the application be made by the other signing inventors and on behalf of themselves and the non-signing named inventor. A Declaration of Bradford L. Friedman is attached in support of this Petition (Attachment A, hereafter "Decl.>").

The non-signing named inventor, Michelangelo Delfino, is a former employee of the predecessor to Varian Medical Systems (Decl. ¶ 2). Varian Medical Systems, in writing, requested Mr. Delfino's signature on an assignment form and declaration (Decl. ¶ 5 and Attachment B). This request was made in a certified letter addressed to Mr. Delfino at his last

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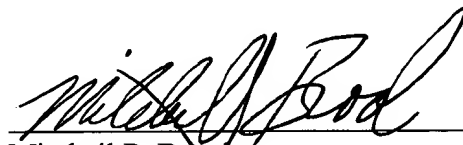
known address (Decl. ¶¶ 4-5 and Attachment B). The certified letter was delivered on August 4, 1999, as evidenced by the Domestic Return Receipt (Decl. ¶ 5 and Attachment B). Mr. Delfino did not respond to this certified letter (Decl. ¶ 6). Mr. Delfino's failure to respond constitutes a refusal to make an oath of declaration. In addition, Varian Medical Systems and Mr. Delfino are currently adverse parties in a lawsuit (Decl. ¶ 7).

Attachment C provides a copy of a Combined Declaration For Patent Application and Power of Attorney signed by all the joint inventors, except Mr. Delfino. This declaration includes a signature block for the non-signing named inventor, which is not signed. This declaration serves as a declaration on behalf of the non-signing joint named applicant as provide in 37 C.F.R. §1.47(a). For the convenience of the Commissioner the original of this declaration is separately submitted herewith, and a true copy of the original is submitted as Attachment C.

#### Conclusion

Based on the foregoing it is respectfully submitted that all of the requirements set forth in 37 C.F.R. §1.47(a) and MPEP §409.03 have been met and this petition be granted. A check in the amount of \$130.00 is enclosed for the petition fee.

Respectfully submitted,



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